

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

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NO.: 98-22

DUE PROCESS HEARING

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FINAL ORDER  
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Jack E. Seaman  
Administrative Law Judge  
611 Commerce Street, Suite 2704  
Nashville, Tennessee 37203  
615/255-0033  
Prof. Resp. No. 4058  
May 20, 1998

O R D E R

Case No. 98-22

A due process hearing was conducted by the undersigned Administrative Law Judge on May 13, 1998. Information provided the Administrative Law Judge reflects that the parents submitted correspondence to the Tennessee Department of Education dated April 9, 1998 requesting a due process hearing and served a request on the school system by letter dated April 20, 1998.

When the undersigned Administrative Law Judge received assignment of this hearing, the issue stated in writing by the parents was "regarding disputes in the child's educational program" and "insufficiency of the school system for the past four consecutive years", with a hearing date of May 13, 1998 agreed upon by all parties. The parents and student were not represented by counsel and, during a telephone conference on May 6, the issue identified for consideration at the due process hearing was whether the current IEP was appropriate. The relief identified as being sought by the parents was communication by the school with the parents regarding the student and, also, placement of the student at a different school system.

It was agreed at the beginning of the due process hearing on May 13, 1998 that the current IEP was the result of an M-Team meeting on May 15, 1997 and that there had been one or more modifications resulting from subsequent M-Team meetings during the school year. It was determined a request for due process hearing was submitted on May 23, 1997 and a hearing conducted on July 21,

1997 concerning issues of extended school year for summer 1997 and a request for direct services in the form of one-on-one counselling. An order was issued on August 8, 1997 denying an extended school year, denying one-on-one counselling, but ordering a program to coordinate implementation of behavior modification. Also, on May 13, 1997, the Administrative Law Judge was advised that an M-Team was scheduled for May 21, 1998 at 9:30 a.m. for the purpose of developing an IEP for this student for the 1998-1999 school year. Although the current IEP would only be in place approximately one week longer, because of the requested relief and the parties and witnesses being present, a hearing was conducted.

In opening statement the parents said they were seeking relief for animosity over the last four years. Counsel for the school system declined to accept responsibility for the existence of animosity - or hostility.

Much of the evidence presented at the due process hearing, and offered to be available for presentation by witnesses who were not present on May 13, was directed primarily to the relationship between the parents and the school employees rather than to the education and educational program for the student. The evidence was undisputed that the student has experienced a good year in school at least insofar as improvements made in the areas of academics and behavior. There was also uncontradicted evidence that the student has improved socially. Significantly, the

evidence establishes, and the Administrative Law Judge so finds, that the evidence is complimentary of the parents for their parenting efforts and skills and is also complimentary of the school system's program and efforts for this student.

The parents expressed concern about the well-being of the student because of alleged prior incidents which they did not believe had been appropriately investigated or resolved. One incident occurred in December of 1997 and testimony indicated that the school's investigation found no evidence to support an allegation that the student had been spanked. Also, after school on March 11, 1998, the mother took the student to the pediatrician's office where the student was diagnosed with pneumonia, upper respiratory infection, and concussion based upon personal examination and history related by the mother. Testimony indicated that the school was unaware of any incident occurring at school on that day, and the Tennessee Department of Human Services had been involved in an investigation, the conclusion or report of which was not available. The parents had contacted a school administrator requesting an appointment to discuss the March 11, 1998 incident and been informed that an appointment would be scheduled; however, the administrator had never provided for their meeting.

The incidents of December 3, 1997 and March 11, 1998, and the relationship of the parents with the school system as it relates to these "incidents" (and possibly "incidents" which pre-

date these), appear to be the source of animosity or hostility which reportedly exists. The parents expressed other reasons for distrust of school personnel, such as a reported statement by a present or past school board member that because this student was the subject of a lawsuit he would be treated differently. Also, the parents and student have previously been represented by legal counsel who terminated the professional relationship and there appears to be conflict between statements former counsel made to the parents and statements made by other persons present at this due process hearing. However, the Administrative Law Judge makes no findings as to the December 3, 1997 "incident", the March 11, 1998 "incident", trust between the parents and school personnel, and any actions by former counsel.

As announced at the conclusion of the hearing on May 13, 1998, and review of any possible evidence sought to be offered by a list of other witnesses the parents requested to be subpoenaed, the Administrative Law Judge finds that there has been no evidence presented, or offered to be presented, which would support an Order of any change in the current IEP. The only change requested prior to hearing was communication; however, the evidence clearly indicates that communication, at least insofar as it relates to the educational and behavioral programs for the student, is occurring and should continue.

For consideration of the issue of whether placement at a different school system should be ordered, the parties were

requested to provide any authorities which might support a grant of this specific relief. No authorities have been presented; however, without determining the availability of such relief, the Administrative Law Judge finds that no evidence has been offered, or suggested as being available, to support this requested relief.

It was suggested in testimony, and in written evidence, that the student could benefit by not being the subject of controversy and the undersigned Administrative Law Judge would agree. A change of school systems is not needed. The controversy, as it may be described, between the parents and school personnel should be resolved by the parents and school personnel and their attention and efforts directed to the student, his studies, his recreational/sports opportunities, his socialization, and his being permitted to be a child in the developmental and educational process.

The Administrative Law Judge anticipates that the contracted licensed clinical social worker, the student's pediatrician, the parents, and involved school personnel will have recommendations and suggestions for consideration at the scheduled May 21, 1998 M-Team meeting as the IEP for this student's 1998-1999 school year is determined. The M-Team process beginning in May of 1997, with subsequent meetings and modifications of the IEP, served this student and school system well in the 1997-1998 school year. Continued efforts and participation by the parents, the

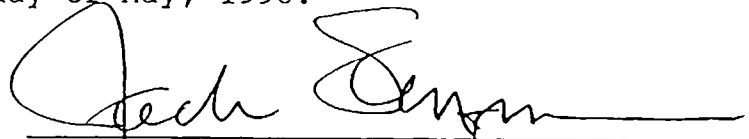
school system, and other interested parties, would benefit this student.

Based upon the foregoing, it is ordered that the requested relief is denied.

Further, the request by counsel for the school system that costs be taxed to the parents is denied as was stated upon consideration of the oral motion at the conclusion of the hearing May 13, 1998.

IT IS SO ORDERED.

Entered this 20th day of May, 1998.

A handwritten signature in black ink, appearing to read "Jack E. Seaman", is written over a horizontal line.

JACK E. SEAMAN, ADMINISTRATIVE  
LAW JUDGE  
611 Commerce Street, Suite 2704  
Nashville, Tennessee 37203  
615/255-0033  
Prof. Resp. #4058

### NOTICE

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order in non-reimbursement cases or three (3) years in cases involving education costs and expenses. In appropriate cases, the reviewing Court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.

Within sixty (60) days from the date of this Order (or thirty [30] days if the Board of Education chooses not to appeal), the local education agency shall render in writing to the District Team Leader and the Office of Compliance, Division of Special Education, a statement of compliance with the provision of this order.

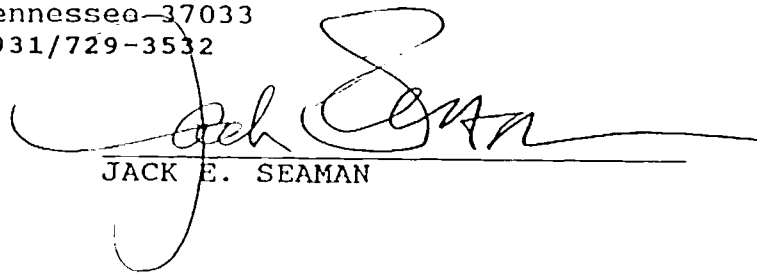


CERTIFICATE OF SERVICE

I hereby certify that a true and copy of the foregoing document has been sent by facsimile transmission and by U. S. mail, postage prepaid, to the following on this 20 day of May, 1998:

  
FACSIMILE NO. 

Dana Dye, Esq.  
105 West End Avenue  
Centerville, Tennessee 37033  
FACSIMILE NO. 931/729-3532

  
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JACK E. SEAMAN

c: Steven T. Raney, Esq.